

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRENCE DARNELL GAMBLE,

Petitioner,

Case No. 1:11-CV-611

v.

HON. ROBERT J. JONKER

SHERRY BURT,

Respondent.

ORDER
APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 31) filed on July 7, 2014. Petitioner filed his objections to the Report and Recommendation (docket # 32) on July 23, 2014.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Petitioner's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct.

The Report and Recommendation carefully parses each of five separate claims submitted by Petitioner, and finds some exhausted and some not. The Court agrees with the Magistrate Judge's exhaustion analysis. The Court also agrees with the Magistrate Judge's recommendations for dealing with a mixed petition like this one.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (doc. #31) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that petitioner's habeas petition is **DISMISSED WITHOUT PREJUDICE**. Petitioner may file an amended petition within 30 days of this order which deletes the unexhausted claims set forth in Issue IV and V of his petition. *See* Rule 8, Rules Governing § 2254 Cases in the United States District Courts.

IT IS SO ORDERED.

Dated: August 11, 2014

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE